IN THE

Supreme Court of the United States

October Term, 1976
No. 76-816

KRISTINA KAY HAYDOCK,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Petition for Writ of Certiorari to the Appellate Department of the Superior Court of California, for the County of Ventura

BRIEF OF RESPONDENT IN OPPOSITION

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Opinion Below

Petitioner's conviction was affirmed by the Appellate Department of the Superior Court of California for the County of Ventura on September 28, 1976. (Appendix A.) The same court denied petitioner's request for rehearing and for certification to the California Court of Appeal on October 13, 1976. (Appendix B.) No written opinion was rendered.

Jurisdiction

The jurisdiction of this Court is apparently invoked pursuant to 28 U.S.C. § 1257(3).

Questions Presented

1. Whether petitioner was denied due process of law under the Fourteenth Amendment of the United States Constitution when she was convicted of being under the influence of heroin in violation of California Health and Safety Code section 11550 and given a mandatory 90 day jail sentence under that statute without the jury being instructed on criminal intent.

2. Whether petitioner was denied the right to a fair jury trial under the Sixth and Fourteenth Amendments of the United States Constitution when the trial judge denied a request for the jury to be instructed on criminal intent.

3. Whether petitioner was denied due process of law under the Fourteenth Amendment of the United States Constitution when the trial judge denied her request for a free transcript of the trial proceedings.

Statement of the Case

In a complaint filed on March 20, 1975, by the District Attorney of Ventura County, State of California, petitioner was charged with unlawfully using or being under the influence of heroin in violation of California Health and Safety Code section 11550.

Petitioner's pretrial motion to provide a court reporter and her demurrer to the complaint were denied. A plea of not guilty was entered on her behalf. Thereafter, petitioner's renewed motion to provide a court reporter and her demurrer to the complaint were denied. Petitioner's motion to dismiss the complaint was denied.

On June 10, 1975, following a trial by jury, petitioner was found guilty as charged in the Municipal Court of Ventura County.

On July 1, 1975, petitioner's motion for a new trial was denied. Petitioner was placed on summary probation for a period of two years on terms and conditions, including that she spend 90 days in the county jail.

On appeal, petitioner's conviction was affirmed by the Appellate Department of the Superior Court of California for the County of Ventura on September 28, 1976. The same court denied petitioner's request for rehearing and for certification to the California Court of Appeal on October 13, 1976.

The instant Petition for Writ of Certiorari was filed on December 14, 1976.

Statement of Facts

On March 9, 1975, petitioner and a male companion, Stephen Strong, went to the Colonia district of Oxnard, California, for the purpose of obtaining and injecting heroin. Having succeeded in that purpose, they proceeded through the city of Thousand Oaks, California, in petitioner's vehicle.

In Thousand Oaks, the vehicle struck a parked vehicle. Ventura County Deputy Sheriffs Western and Godfrey responded to the scene of the accident, along with two fire department vehicles. Deputy Godfrey interviewed Strong and Deputy Western interviewed petitioner. Following these conversations, the deputies formed the opinion that Strong and petitioner were under the influence of heroin. They then verified each other's opinion as to each person.

Strong and petitioner then accompanied the deputies to a Ventura County Sheriffs' Office. At the sheriffs' office, petitioner was examined by Deputy Sheriff Whitmeyer, a narcotic expert. Deputy Whitmeyer also formed the opinion that petitioner was under the influence of heroin, and arrested her for violation of California Health and Safety Code section 11550.

At the sheriffs' office, petitioner agreed to provide a urine sample. She apparently "dipped" the sample out of the toilet, as it was found to be water. She later gave an actual urine sample which was found to contain morphine.

Petitioner was advised of her *Miranda* rights, stated that she understood those rights, and agreed to talk to the deputies without an attorney present. Thereafter, petitioner admitted using heroin in the Colonia district of Oxnard.[1]

[1]At a hearing outside the presence of the jury, petitioner denied having ever been admonished as to her rights. The trial court ruled that her statements were admissible.

ARGUMENT

I

Failure to Instruct on Intent Was Harmless

Petitioner contends that she was denied due process of law and the right to a fair jury trial when the trial judge denied a request to instruct the jury on the joint operation of act and general intent. She bases this contention on the arguments that California Health and Safety Code section 11550 is repugnant to the due process clause of the Fourteenth Amendment unless it can be interpreted to require a criminal state of mind, that it was reversible error to remove this element from the jury's consideration, and that the mandatory minimum 90 day jail sentence imposed by the statute denies a defendant due process of the law absent a finding of criminal intent. Respondent submits that failure to give the instruction was harmless error.

That trial judge denied both the defense and prosecution's request to instruct the jury on general intent. With respect to the elements of the offense, the jury was instructed that:

> "Every person who is under the influence of any controlled substance, such as heroin, as charged in the complaint, is guilty of a misdemeanor.
>
> "If a controlled substance is appreciably affecting the nervous system, brain, muscles, or other parts of a person's body, or is creating in him any perceptible abnormal, mental or physical condition, such a person is under the influence of a controlled substance." CALJIC No. 16.060.

The settled statement on which this matter was appealed to the Appellate Division of the Superior Court of the State of California, clearly shows that even if the jury had been instructed on general intent in addition to the basic elements of the offense, the verdict would have been the same. The evidence was overwhelming that petitioner either caused a controlled substance to be placed within her person or had knowledge that it was being placed within her person and consented to it. The evidence was also overwhelming that petitioner had knowledge of the nature of the substance. Clearly, the evidence showed that petitioner intentionally did an act proscribed by California Health and Safety Code section 11550, and that is all that is required to show general intent.

The evidence established that petitioner exhibited all of the primary signs of narcotics usage. Petitioner attempted to cover up the fact that she was under the influence of heroin by filling a urine sample bottle with water and submitting it as her own urine sample. Her extrajudicial admissions were introduced which included the statement that she had been injected with heroin by someone else and that there was no force or duress used in the fixing. *No* evidence was offered to dispute the overwhelming evidence that petitioner intended to do the acts proscribed by California Health and Safety Code section 11550.

It is axiomatic that where it is clear beyond a reasonable doubt that a result more favorable to a defendant would not have occurred were there no error, the error is harmless. Under such circumstances, reversal is not warranted. *Chapman v. California,* 386 U.S. 18, 24, 17 L.Ed.2d 705, 87 S.Ct. 824 (1967); *United States v. Nasse,* 432 F.2d 1293, 1303 (7th

Cir. 1970); *Pasterchik v. United States,* 400 F.2d 696, 699-700 (9th Cir. 1968). The *Chapman* standard is applied where evidence is so overwhelming in favor of guilt that it cannot be said that the error contributed to petitioner's conviction. *See Harrington v. California,* 395 U.S. 250, 252-54, 23 L.Ed.2d 84, 89 S.Ct. 1726 (1969).

Petitioner maintains that the instant error cannot be deemed "harmless" because the question of intent must always be submitted to the jury and failure to do so is reversible error *per se.* (*See* Petn. 16-19.) She cites, as authority for this position, *Morissette v. United States,* 342 U.S. 246, 274, 96 L.Ed. 288, 72 S.Ct. 240 (1952), *citing People v. Flack,* 125 N.Y. 324, 334; 26 N.E. 267, 270. (*See* Petn. 17-18.) In *Morissette* the question of intent was taken from the jury's determination by an instruction that the law raises a presumption of criminal intent from the act and by a statement by the trial court which specifically precluded the defendant from raising an affirmative defense to the question of intent even though there was testimony that would have supported such a defense. *Morissette v. United States, supra* at 248-49, 273-74. Thus, the case stands for the proposition that it was error to create a conclusive presumption which could not be rebutted by testimony and effectively eliminated intent as an ingredient of the offense. *Id.* at 275. To that end, the court endorsed the state court's position in *Flack* that where intent is an element, it is to be submitted to the jury. *Id.* at 274.

Respondent does not quarrel with the proposition that the jury should be instructed on general intent on offenses such as the one at bar. However, respondent maintains that the case law does not support the conten-

tion that failure to so instruct is *per se* error. Such a standard would be tantamount to a rule of automatic reversal whenever a technical error occurred in instructing the jury. That is not the test of harmless error, and, in fact, would effectively abolish the concept of harmless error.

This is not a case where a state court has set forth a rule which might be contrary to the United States Constitution and thus, deny future defendants federal rights. The decision of the Appellate Department of the Superior Court of the State of California was rendered without a written opinion and has no precedential effect. In the context of the instant controversy, any error was harmless.

II

Petitioner Was Not Prejudiced by Having to Appeal the Case on an Engrossed Settled Statement of Facts

As part of her argument that failure to give an instruction on general intent was not harmless error, petitioner maintains that she was prejudiced by not having the benefit of a free transcript of the proceedings in the trial court. Her argument is that a summary of the record provided by an engrossed settled statement on appeal might cause an appellate court to hold that any error was harmless because of not having a chance to review cross-examination of prosecution witnesses. (Petn. 21-22.) Respondent submits that there is no merit in petitioner's position.

Petitioner does not set forth any errors or omissions in the settled statement which went before the state appellate courts. She does not claim that a transcript would provide any specific information in support of her contentions on appeal. Without objection to the content of the settled statement, petitioner's argument is meritless.

Under California Rules of Court, on appeal from a conviction in the municipal court, a defendant must "specify the grounds on which he intends to rely upon appeal and set forth so much of the evidence and other proceedings as are necessary for a decision upon said grounds." Cal. Rules of Court, Rule 184(b). Petitioner does not claim that she set forth any grounds or evidence which were not included in the settled statement. The settled statement included a summary of the testimony of all the witnesses at trial. Respondent submits that this was sufficient for the reviewing court.

Moreover, petitioner has failed to assert a basis for providing her with a *free* transcript of the proceedings, which is what she requested in the trial court. Under some circumstances, an indigent defendant is entitled to a free transcript. *Mayer v. City of Chicago*, 404 U.S. 189, 193-99, 30 L.Ed.2d 372, 92 S.Ct. 410 (1971). In fact, under California law, once an indigent defendant makes a showing that a settled statement is insufficient, the burden shifts to the people to show that it is sufficient. *March v. Municipal Court*, 7 Cal.3d 422, 428-31, 498 P.2d 437, 102 Cal.Rptr. 597 (1972). Petitioner does not set forth that any showing of indigency was made at the trial court, and, under California law, there must be some affirmative showing of indigency. *People v. Westbrook*, 57 Cal.App.3d 260, 262-64, 129 Cal.Rptr. 143 (1976). Respondent submits that this procedure is consistent with federal constitutional rights.

The state must provide an indigent defendant with a record of sufficient completeness to permit the proper consideration of his contentions. This rule does not automatically require a complete verbatim transcript, but may be complied with by a settled statement of facts, agreed to by both sides. *Mayer v. City of Chicago, supra* at 194-95; *Williams v. Oklahoma City,* 395 U.S. 458, 459-60, 23 L.Ed.2d 440, 89 S.Ct. 1818 (1969); *Draper v. Washington,* 372 U.S. 487, 495-96, 9 L.Ed.2d 899, 83 S.Ct. 774 (1963). That is what occurred in the instant case.

Respondent submits that petitioner was not prejudiced by having to appeal the case on an engrossed settled statement of facts.

Conclusion

For the foregoing reasons, respondent urges that the petition for writ of certiorari be denied.

Respectfully submitted,

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